



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,574	03/17/2006	Edeltraud Blaeser	283578US0PCT	2746
22850	7590	07/23/2010		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER ZAREK, PAUL E	
			ART UNIT 1628	PAPER NUMBER
			NOTIFICATION DATE 07/23/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

ADVISORY ACTION

1. Claims 1-3 and 5-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Viscovitz (International Application no. WO 01/30315, provided in IDS) in further view of Kipp, et al., (US PreGrant Publication no. 2004/0022862). Applicants traversed this rejection on the grounds that these prior art do not teach or fairly suggest the invention. Specifically, Applicants contend that there is no motivation to combine Viscovitz, Kipp, et al., and Chiarelli, et al. (Examiner notes that the instant claims are not rejected over Chiarelli, et al.) Applicants contend that there Kipp, et al., discloses a “tremendously large genus” of solvents and that there is no reason why a skilled artisan would use polyethylene glycol (PEG) as a solvent in Viscovitz. Applicants also argue that given the disclosure of Viscovitz, the art worker would not have chosen PEG-15 cocamine as a pH adjusting agent and if PEG-15 cocamine was chosen, would not have used between 1 and 70 wt%. Finally, Applicants submit that the instantly claimed composition is unexpectedly superior to the composition of the prior art. Respectfully, Examiner does not find Applicants’ arguments persuasive.

2. Viscovitz teaches a skin cleansing composition comprising components b-j of instant Claim 1. Viscovitz does not explicitly contemplate the presence of PEG-15 cocamine, the elected species of an ethoxylated amine. However, Viscovitz does suggest the presence of pH adjusters, and Chiarelli, et al., disclose that PEG-15 is a known pH adjuster which is suitable for topical use. Indeed, PEG-15 cocamine is commonly used in topical and cosmetic compositions. Viscovitz does not teach away from using PEG-15 cocaime; rather this prior art suggests certain acids. The teaching of alternative embodiments is not akin to teaching away. There is nothing in

Art Unit: 1628

Viscovitz to preclude the presence of alternate pH adjusters. Determining the proper amount of PEG-15 cocamine to be above 1% is considered routine optimization, which is not a patentably distinguishing feature of an invention, in the absence of unexpected results.

3. Kipp, et al., teach that the polyethylene glycols are known solvents. PEG-15 cocamine is encompassed by “polyethylene glycol,” thus the artisan would reasonably expect that PEG-15 cocamine would act as a solvent in addition to being a pH adjuster. Using PEG-15 cocamine as a solvent implies that a significant portion of the composition of Viscovitz is comprised of this reagent. Kipp, et al., also teach that the compositions contained therein are useful for topically applied compositions. Thus, one of ordinary skill in the art would reasonably be expected to appreciate the teachings contained in Kipp, et al.

4. Applicants’ assertion of unexpected results is not persuasive. Firstly, the results are not contained in the form of a declaration. “‘The evidence relied *>upon< should establish “that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance.’ *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992) (Mere conclusions in appellants’ brief that the claimed polymer had an unexpectedly increased impact strength ‘are not entitled to the weight of conclusions accompanying the evidence, either in the specification or in a declaration.’)” (MPEP § 716.02(b)(I)). Secondly, the side-by-side comparison does not sufficiently demonstrate unexpected superior skin cleansing properties over the entire scope of the claim. “Evidence of unexpected properties may be in the form of a direct or indirect comparison of the claimed invention with the closest prior art which is commensurate in scope with the claims. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and MPEP § 716.02(d) - § 716.02(e).” (MPEP § 716.02(b)(III)).

Art Unit: 1628

5. For the above reasons, Applicants' arguments are not sufficient to overcome the standing rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Zarek whose telephone number is (571) 270-5754. The examiner can normally be reached on Monday-Thursday, 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PEZ

/San-ming Hui/
Primary Examiner, Art Unit 1628